

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

	X	
In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(MKB)(JAM)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(MKB)(JAM)
	:	
	:	RULE 23(b)(3) CLASS COUNSEL'S
This Document Relates To:	:	MONTHLY REPORT REGARDING THIRD-
	:	PARTY ENTITIES
ALL ACTIONS.	:	
	:	
	X	

I. INTRODUCTION

This is the third monthly report regarding third-party claims filers following the Court's request.

As Rule 23(b)(3) Class Counsel ("Class Counsel") reported in November, with the claims process ramping up, there has been a noticeable increase in class member calls. Since the last report, the numbers have steadily increased. These calls are tracked and reported to Class Counsel from Epiq. Class Counsel also directly receives calls and emails regarding third parties that are followed up on immediately. Additionally, Class Counsel regularly searches online using various keywords in an attempt to monitor what is a fluid situation.

As also previously reported, Class Counsel were alerted to a marketing campaign related to a website called settlement2023.org. The website is no longer available. However, despite best efforts, Class Counsel was never able to speak with anyone associated with the website. Magistrate Judge Marutollo's Report and Recommendation addressed many of the concerning issues related to the settlement2023.org website. ECF 9009. The Report and Recommendation contains a detailed summary of the issues regarding settlement2023.org. *Id.* at 1-8. The Report and Recommendation also contains several proposed orders. Class Counsel believes the proposed orders should be adopted in full.

The Report and Recommendation also recommended that the District Court order Class Counsel to "promptly inform the Court of any newly-detected websites, social media accounts, online marketplace accounts, or product listings that attempt to engage in false and misleading sales activities that attempt to mirror the Court-authorized website or contravene the Court's prior orders." ECF 9009 at 2. Based on Class Counsel's understanding of the District Court's directives, Class Counsel believes it is currently following the recommendations by filing monthly reports

and alerting the Court to pressing matters related to third parties as soon as they arise. Class Counsel has also directed Epiq to post the Report and Recommendation to the paymentcardsettlement.com website.

In this report, Class Counsel describes current issues related to third parties.

II. CURRENT THIRD-PARTY ISSUES

A. Marketing Issues – Settlement2023.org

On October 30, 2023, Class Counsel was alerted to a website and marketing campaign that was highly suspicious. Following the November status report detailing the misleading nature of the website and efforts to contact the operators of the site, Class Counsel filed a letter seeking an Order to show cause. ECF 8996. Details related to Class Counsel's efforts to contact the entities responsible for the website are discussed in the Report and Recommendation as well as in two proofs of service filed by Class Counsel. *See* discussion above regarding ECF 9009; *see also* ECFs 9001, 9011 (proofs of service detailing efforts to contact the person or persons responsible for settlement2023.org). Epiq has been instructed to apprise Class Counsel immediately should any claims attempt to be filed on behalf of class members through the settlement2023.org organization.

B. New Issues

Class Counsel has continued to see an increase in questions and concerns from class members regarding other third-party claims filers. In the past four weeks Class Counsel has reached out to several third-party claims filers to request changes to marketing materials that were either incorrect, misleading, or both. There are three current matters.

First, Class Counsel here reports on an issue related to the company J.E. Lawrence and Company, LLC ("J.E. Lawrence"). On December 6, 2023, a class member contacted Class Counsel with concerns regarding multiple solicitations received over a short period of time. The

class member read the Court's orders regarding third parties and then contacted Class Counsel. While the public-facing materials of J.E. Lawrence appear compliant, Class Counsel was surprised to see a failure to include any disclaimers and that a purported V.P. from the company was making numerous false and/or misleading statements via email to an untold number of class members. Class Counsel immediately wrote to the contact at J.E. Lawrence to whom Class Counsel has spoken with multiple times to demand: (1) that the false and/or misleading solicitations cease; (2) to correct all prior misstatements that had been shared with class members; and (3) to allow any class member that signed up with J.E. Lawrence for claims filing based on the improper solicitations to cancel their contracts. Because of the seriousness of the misstatements and Class Counsel's lack of insight into how many class members may have received these false solicitations, Class Counsel informed J.E. Lawrence that they would be reporting this issue to the Court in the status report.

Class Counsel and J.E. Lawrence held a conference call on December 7, 2023. Representatives for J.E. Lawrence committed to making a corrective disclosure (that will be first shared with Class Counsel), providing a list of any class members that received the misleading communications and giving all class members who may have signed up with the company based on the misleading statements a chance to cancel their contract. J.E. Lawrence also stated that they would stop the person who had sent the emails from contacting class members. It was not clear whether other adverse actions would be taken regarding the person who sent an unknown number of emails containing misleading information and lacking disclaimers. Due to the timing of this report, Class Counsel proposes providing an update regarding this situation in one week.

Two additional issues may not yet be ripe for Court intervention. First, Class Counsel is in discussions with a law firm offering claims-filing services who also served as one of plaintiffs'

counsel. It is Class Counsel's position that this new service being offered is in conflict with the firm's duty as one of plaintiffs' counsel who has already received attorneys' fees. The parties have been discussing the matter and have exchanged correspondence and held two conference calls. Should agreement not be reached, Class Counsel will bring the matter to the Court right away. The second matter relates to a claims filing and claims buying company that has certain material on their website (a claims calculator) that Class Counsel believes is improper. Class Counsel sent a letter on December 6, 2023 raising the issue and requesting that the company make changes. On December 7, 2023, the parties had a conference call and the company agreed to remove the calculator that purported to show an estimated amount of recovery from the website and further agreed to make other changes requested by Class Counsel to the website. The changes have been made and at present, the issue appears resolved.

C. Outreach Efforts

Class Counsel hosted two lengthy conference calls for all known third-party claims filers and law firms involved in claims filing in November. The first conference call, on November 17, 2023, had more than 100 participants so a second conference call was held on November 20, 2023 to ensure that all that wanted to attend were able. The calls were intended to go over issues, answer questions, and provide updated disclaimer language.¹

The new proposed disclaimer language (required by December 1, 2023) is set forth below:

1. Claim forms are being delivered and are available online beginning December 1, 2023.

¹ To the extent necessary, Class Counsel may schedule additional calls to answer common questions received.

2. Class members need not sign up for a third-party service in order to participate in any monetary relief.

3. No-cost assistance is available from the Class Administrator and Class Counsel during the claims-filing period.

4. Information directing class members to the Court-approved website www.paymentcardsettlement.com for additional information.

The call prompted additional queries from third parties, which have generally been answered by Epiq with input from Class Counsel.

D. Outreach to Third Parties by Epiq

As Class Counsel reported in October and November, since August 18, 2023, Epiq has been performing specific outreach efforts to known third-party claims filers. An email was sent to 134 third-party claims filers. As of December 5, 2023, Epiq has been in communication with 66 third-party claims filers, law firms, and non-traditional bulk filers following the outreach that took place on August 18, 2023. Of those 66 third parties, Epiq has received client lists from 38 third-party claims filers which claim representation of 124,038 Tax Identification Numbers (“TIN”)/Legal Entities. These client lists also include multiple rows for a single TIN, and multiple rows that lack Tax IDs or have invalid Tax IDs (alphabetic characters, too few or too many digits). Of those 38 third-party claims filers, Epiq has received 56,716 documents from 33 third-party claims filers. Several third-party claims filers have combined their documentation into a single .pdf that covers multiple clients, so the true number is likely higher than the current document count can substantiate. Work continues, including the development of processes to efficiently handle the expected increase in third-party claims.

III. CONCLUSION

Class Counsel will continue to apprise the Court regarding issues with third-party claims filers via monthly reports and will bring urgent matters to the Court's attention via letter or other means should the Court wish a different method to be used. The next monthly report will be filed on January 12, 2024.

DATED: December 8, 2023

ROBBINS GELLER RUDMAN
& DOWD LLP
PATRICK J. COUGHLIN
ALEXANDRA S. BERNAY

s/ Alexandra S. Bernay
ALEXANDRA S. BERNAY

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBINS KAPLAN LLP
K. CRAIG WILDFANG
THOMAS J. UNDLIN
2800 LaSalle Plaza
800 LaSalle Avenue South
Minneapolis, MN 55402-2015
Telephone: 612/349-8500
612/339-4181 (fax)

BERGER MONTAGUE PC
H. LADDIE MONTAGUE, JR.
MERRILL G. DAVIDOFF
MICHAEL J. KANE
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: 215/875-3000
215/875-4604 (fax)

Co-Lead Counsel for Plaintiffs